

UNITED STATES OF AMERICA

v.

SALIM AHMED HAMDAN

D-031

Ruling on Defense Motion
for Employment of Expert Witness
(Dr. Emily Keram) and Request for
Continuance
23 April 2008

The Defense has moved the Commission to compel the Convening Authority to provide funding for 132 hours of additional work by Dr. Emily Keram, a forensic psychiatrist who has been employed by the Defense for various consultations and interviews since 2004. Between 2004 and the present, Dr. Keram had devoted more than 100 hours of work to this case. The Government opposes the motion, arguing that the Convening Authority has properly evaluated and denied the Defense request. The Defense also seeks a continuance of the scheduled litigation of the motions with respect to which Dr. Keram was to have testified, until the session of Court beginning 28 May, 2008. The Government also opposes this request, arguing that Dr. Keram's testimony on both motions is neither relevant nor necessary.

The Defense seeks the continued employment of Dr. Keram for testimony in connection with two different motions. One challenges the conditions of the accused's "pretrial confinement," alleging that they are unnecessarily severe and constitute pretrial punishment, and seeking pretrial punishment credit for the time the accused has spent in solitary confinement. The other seeks to suppress statements of the accused that were allegedly obtained through coercive techniques. After a protracted exchange of correspondence between the Defense and the Convening Authority between June of 2007 and April of 2008, the Convening Authority denied the request for additional compensated service by Dr. Keram on 4 April 2008.

The Convening Authority denied the request for Dr. Keram's services with respect to the pretrial confinement motion on the grounds that "there has been no judicial determination that the accused is in pretrial confinement, or that the conditions of his detention are illegal. Even assuming, *arguendo*, that multi-day credit is a remedy available in military commissions practice, the standard is objective and would not require the expert testimony of a psychiatrist." With respect to the motion to suppress the accused's statements because they were obtained through coercive techniques, the Convening Authority wrote "Your 17 March 2008 request does not provide any indication that the accused's pretrial statements were obtained through the use of coercion, other than that the defense expects Dr. Keram to testify that Hamdan "experienced a real fear of death in Afghanistan . . . Your motion to suppress states that Dr. Keram will testify about the facts of various interrogation techniques alleged[ly] used on Hamdan. . . . The motion does not identify the statement with respect to an interrogation technique, nor does it inform me of Dr. Keram's opinion as it relates to the statement. You have made no showing that Dr. Keram's expertise as a forensic psychologist [sic] is relevant and necessary for purposes of your Motion to Suppress." As a consequence, the Convening Authority denied the services of Dr. Keram with respect to both pending motions.

At the same time, the Convening Authority (1) approved funds for Dr. Keram's travel to Guantanamo Bay to testify regarding the interrogation methods allegedly used on Mr. Hamdan,

and (2) offered to reconsider her denial if the Defense is able to "provide a link between Dr. Keram's expertise as a forensic psychiatrist" and an alleged connection between the solitary confinement and an impairment of the accused's right to counsel and his right to be present at trial.


ANALYSIS AND DECISION

The Commission concurs with the Convening Authority's determination that the testimony of a forensic psychiatrist is unnecessary to the resolution of a motion regarding the conditions of confinement or the issue of pretrial punishment.

The Commission concurs that the Defense has not shown how a generalized fear that arose in Afghanistan, when the accused was apparently beaten and threatened by Afghan and Egyptian forces, rendered his subsequent statements to American interrogators (some of which were given years later) the product of coercion.

The Commission concurs with the Convening Authority's willingness to entertain additional hours by Dr. Keram if the Defense shows a connection between those professional services and the accused's right to counsel and to be present at trial. In order to permit the Defense to make that showing, the Commission GRANTS the motion up to four additional hours of Dr. Keram's services.

At this late date, Dr. Keram may not reasonably be expected to travel to Guantanamo Bay for the next session of trial. If the Defense prefers another month of continuance over addressing the conditions of the accused's confinement at the end of April, the continuance is granted. The continuance also permits the Defense to make its additional showing regarding right to counsel, and may permit Dr. Keram to prepare more thoroughly before she travels to Guantanamo Bay in May.


Keith J. Allred
Captain, JAGC, USN
Military Judge